

Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021

SL 2021/178

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) Part 2 — on the day on which the *Environmental Protection Amendment Act 2020* section 57 comes into operation;
- (c) Part 3 — on the day on which the *Environmental Protection Amendment Act 2020* section 16 comes into operation.

Part 2 — *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* amended

3. Regulations amended

This Part amends the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*.

4. Part 1 heading inserted

Before regulation 1 insert:

Part 1 — Preliminary

5. Part 2 heading inserted

After regulation 3 insert:

Part 2 — General matters

6. Regulation 8 replaced

Delete regulation 8 and insert:

**8. Public records of particulars to be kept by CEO
(s. 51Q(a))**

- (1) For the purposes of section 51Q(a) of the Act, the particulars are set out in subregulations (2) to (8).
- (2) The particulars of applications for clearing permits under section 51E(1) of the Act are as follows —
 - (a) the name of the applicant;
 - (b) whether the application is for an area permit or a purpose permit;
 - (c) a description of the land to which the application relates;
 - (d) the purpose of the proposed clearing;
 - (e) in the case of an application for an area permit — the size of the area to be cleared or the number of trees to be cleared;
 - (f) the period for which the permit is sought.
- (3) The particulars of applications for amendments of clearing permits under section 51K(2)(a) of the Act are as follows —
 - (a) the name of the applicant;
 - (b) whether the application is for the amendment of an area permit or a purpose permit;
 - (c) in the case of an application for amendment of an area permit — any change in the size of the area to be cleared or the number of trees to be cleared;
 - (d) in the case of an application to amend the period during which the permit is in force — the period for which the permit is sought.
- (4) The particulars of clearing permits that are in force are as follows —
 - (a) the name of the permit holder;
 - (b) whether the permit is an area permit or a purpose permit;

- (c) a description of the land to which the permit relates;
 - (d) the purpose of the clearing;
 - (e) in the case of an area permit — the size of the area to be cleared or the number of trees to be cleared;
 - (f) the conditions to which the permit is subject;
 - (g) the period during which the permit is in force.
- (5) The particulars of undertakings given by the CEO under section 51E(9) of the Act are as follows —
 - (a) the name of the person to whom the undertaking is given;
 - (b) a description of the land to which the permit that will be granted in accordance with the undertaking relates;
 - (c) the purpose of the proposed clearing;
 - (d) the size of the area to be cleared or the number of trees to be cleared under the permit that will be granted in accordance with the undertaking;
 - (e) the conditions to which the permit that will be granted in accordance with the undertaking is to be subject;
 - (f) the period for which the permit that will be granted in accordance with the undertaking is to be in force.
- (6) The particulars of notifications received under section 51N(1) of the Act of the transfer or passing of the owner's interest in the land are as follows —
 - (a) the name of the person giving the notification;
 - (b) the date on which the interest was transferred or passed, or will transfer or pass, to the person giving the notification;
 - (c) the date on which the notice was received by the CEO.
- (7) The particulars of the surrender of clearing permits accepted by the CEO under section 51MA(7)(a) of the Act are as follows —
 - (a) the name of the person who applied to surrender the permit;
 - (b) the identification number of the permit;
 - (c) the date on which the CEO accepted the surrender.
- (8) The particulars of clearing permits revoked or suspended by the CEO under section 51L(1) of the Act are as follows —

- (a) the name of the permit holder at the time of the revocation or suspension;
- (b) the identification number of the permit;
- (c) the grounds for the revocation or suspension;
- (d) the date on which the permit was revoked or suspended.

8A. Public records of other information and documents to be kept by CEO (s. 51Q(b))

For the purposes of section 51Q(b) of the Act, the CEO must keep a public record of information and documents given to the CEO in response to a written notice given by the CEO under section 51E(1A), 51KA(2) or 51MA(3) of the Act.

7. Part 3 inserted

After regulation 9 insert:

Part 3 — Publication and confidentiality

10. Terms used

In this Part each of the following terms has the meaning given in section 122B(1) of the Act —

documentation

publish

submit

11. CEO may keep documentation confidential on request

- (1) In this regulation —

clearing referral means a referral of proposed clearing under section 51DA(2) of the Act;

confidential material means either of the following —

- (a) trade secrets of a person;
- (b) confidential information (other than trade secrets) that has a commercial value to a person that would be, or could reasonably be expected to be, destroyed or diminished if the confidential information were published.

- (2) A person may, when submitting documentation to the CEO in relation to a clearing referral or a clearing permit, request in writing that the CEO not publish the whole or part of the documentation (the *relevant documentation*) because of the confidential nature of the relevant documentation.

- (3) If a request is made under subregulation (2) by electronic communication (as defined in the *Electronic Transactions Act 2011* section 5(1)), the CEO must acknowledge receipt of the request in writing.
- (4) On receipt of a request under subregulation (2) and, if subregulation (3) applies, after the CEO has acknowledged receipt of the request the CEO —
 - (a) must, if satisfied that the whole or part of the relevant documentation contains confidential material, refrain from publishing that whole or part; and
 - (b) may refrain from publishing the whole or part of the relevant documentation if the CEO —
 - (i) is not satisfied of the matters referred to in paragraph (a); but
 - (ii) is satisfied that it is desirable to refrain from publishing that whole or part because of the confidential nature of that whole or part.

12. CEO must keep certain matters confidential

- (1) The CEO must refrain from publishing any BSB number or bank account number contained in documentation submitted to the CEO in relation to a clearing referral (as defined in regulation 11(1)) or a clearing permit.
- (2) Subregulation (1) applies whether or not a request has been made under regulation 11(2).

13. CEO may keep certain matters confidential

- (1) In this regulation —

Aboriginal site has the meaning given in the *Aboriginal Heritage Act 1972* section 4;

native species has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

priority list means either of the following —

 - (a) the document titled “Threatened and Priority Flora List”, as retitled or amended from time to time, published by the department principally assisting in the administration of the *Biodiversity Conservation Act 2016* (the *department*) on its website;
 - (b) the document titled “Threatened and Priority Fauna List”, as retitled or amended from time to time, published by the department on its website;

species has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

threatened species has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1).

- (2) The CEO may at any time refrain from publishing any of the following information if it is confidential (whether or not a request has been made under regulation 11(2)) —
- (a) personal information;
 - (b) the precise location of any of the following —
 - (i) a threatened species;
 - (ii) any other species listed, designated or declared as threatened, endangered or vulnerable under or for the purposes of a written law;
 - (iii) a listed threatened species as defined in the Commonwealth Environment Act section 528;
 - (iv) a species listed on a priority list;
 - (v) a breeding area of a species referred to in subparagraphs (i) to (iv);
 - (c) the precise location of a population of a native species, or a breeding area of a native species, if the CEO considers that the survival of a population of the native species could be threatened by —
 - (i) publishing that information; or
 - (ii) the presence or actions of persons if that information were published;
 - (d) the precise location of an Aboriginal site, if the precise location of that site is identified in documentation provided to the CEO in relation to a clearing referral (as defined in regulation 11(1)) or a clearing permit.

Notes:

1. The heading to regulation 4 is to read:
Intentionally sown, planted or propagated vegetation (s. 51A)
2. The heading to regulation 5 is to read:
Prescribed clearing (s. 51C)

Part 3 — *Environmental Protection Regulations 1987* amended

8. Regulations amended

This Part amends the *Environmental Protection Regulations 1987*.

9. Regulation 2B replaced

Delete regulation 2B and insert:

2B. Publication of Authority minutes and records

(1) In this regulation —

exempt matter means matter that is exempt under the *Freedom of Information Act 1992* Schedule 1;

minute means a minute of proceedings of a meeting of the Authority;

record means a record kept under section 14A(7) of the Act.

(2) Subject to subregulation (4), the Authority must —

- (a) cause a minute to be published within 6 months after the date of the meeting to which the minute relates; and
- (b) cause a record to be published within 6 months after the date of the decision to which the record relates.

(3) The Authority may determine that a minute or record, or a part of a minute or record, contains exempt matter.

(4) The Authority must not publish a minute or record, or a part of a minute or record, that is the subject of a determination under subregulation (3).

(5) The Authority may revoke a determination made under subregulation (3).

10. Regulation 3 replaced

Delete regulation 3 and insert:

3. Details prescribed for records of referred proposals

The Authority must in a public record of a referred proposal kept under section 39 of the Act set out —

- (a) the title or number or other means of identification of the proposal; and

- (b) the name of, or the office or position held or acted in by, the proponent of the proposal.

11. Part 2A inserted

After regulation 3 insert:

Part 2A — Publication and confidentiality

3A. Terms used

In this Part each of the following terms has the meaning given in section 122B(1) of the Act —

documentation

publish

submit

3B. Authority may keep documentation relating to proposals confidential on request

- (1) In this regulation —

confidential material means either of the following —

- (a) trade secrets of a person;
 - (b) confidential information (other than trade secrets) that has a commercial value to a person that would be, or could reasonably be expected to be, destroyed or diminished if the confidential information were published.
- (2) The proponent of a referred proposal or an approved proposal may, when submitting documentation to the Authority in relation to the proposal, request in writing that the Authority not publish the whole or part of the documentation (the *relevant documentation*) because of the confidential nature of the relevant documentation.
- (3) If a request is made under subregulation (2) by electronic communication (as defined in the *Electronic Transactions Act 2011* section 5(1)), the Authority must acknowledge receipt of the request in writing.
- (4) On receipt of a request under subregulation (2) and, if subregulation (3) applies, after the Authority has acknowledged receipt of the request the Authority —
- (a) must, if satisfied that the whole or part of the relevant documentation contains confidential material, refrain from publishing that whole or part; and

- (b) may refrain from publishing the whole or part of the relevant documentation if the Authority —
 - (i) is not satisfied of the matters referred to in paragraph (a); but
 - (ii) is satisfied that it is desirable to refrain from publishing that whole or part because of the confidential nature of that whole or part.

3C. Authority must keep certain matters confidential

- (1) The Authority must refrain from publishing any BSB number or bank account number contained in documentation submitted to the Authority in relation to a referred proposal or an approved proposal.
- (2) Subregulation (1) applies whether or not a request has been made under regulation 3B(2).

3D. Authority may keep certain matters relating to proposals confidential

- (1) In this regulation —
 - Aboriginal site* has the meaning given in the *Aboriginal Heritage Act 1972* section 4;
 - native species* has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);
 - priority list* means either of the following —
 - (a) the document titled “Threatened and Priority Flora List”, as retitled or amended from time to time, published by the department principally assisting in the administration of the *Biodiversity Conservation Act 2016* (the *department*) on its website;
 - (b) the document titled “Threatened and Priority Fauna List”, as retitled or amended from time to time, published by the department on its website;
 - species* has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);
 - threatened species* has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1).
- (2) The Authority may at any time refrain from publishing any of the following information if it is confidential (whether or not a request has been made under regulation 3B(2)) —
 - (a) personal information;
 - (b) the precise location of any of the following —

- (i) a threatened species;
 - (ii) any other species listed, designated or declared as threatened, endangered or vulnerable under or for the purposes of a written law;
 - (iii) a listed threatened species as defined in the Commonwealth Environment Act section 528;
 - (iv) a species listed on a priority list;
 - (v) a breeding area of a species referred to in subparagraphs (i) to (iv);
- (c) the precise location of a population of a native species, or a breeding area of a native species, if the Authority considers that the survival of a population of the native species could be threatened by —
 - (i) publishing that information; or
 - (ii) the presence or actions of persons if that information were published;
- (d) the precise location of an Aboriginal site, if the precise location of that site is identified in documentation provided to the Authority in relation to a referred proposal or an approved proposal.

V. MOLAN, Clerk of the Executive Council.



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Environmental Protection (Bilateral Agreements) Regulations 2021

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Defined terms

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Environmental Protection Act 1986

Environmental Protection (Bilateral Agreements) Regulations 2021

SL 2021/177

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Environmental Protection (Bilateral Agreements) Regulations 2021*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Environmental Protection Amendment Act 2020* section 100 comes into operation.

3. Terms used

In these regulations —

bilateral application means an application referred to in regulation 4(1);

initiating process, for a matter, means an application or other process that initiates consideration of the matter under the Act;

relevant State entity, for a matter, means the State entity who is given the initiating process for the matter.

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4. Application to have matter dealt with as bilateral matter

- (1) A person may, in respect of a matter, apply to the relevant State entity for the matter to be dealt with under the Act as a bilateral matter if, under a bilateral agreement, the performance of functions in respect of the matter by a State entity will or may have effect for the purposes of the Commonwealth Environment Act.
- (2) The person must make a bilateral application in relation to a matter —
 - (a) if the initiating process for the matter is a referral of a proposal by a person other than the proponent and the proponent receives a requisition under section 38F(2) of the Act — on or before the day on which the compliance period specified in the requisition under that section ends; or
 - (b) in any other case — on the day on which the initiating process for the matter is given to the relevant State entity for the matter.
- (3) However, if a bilateral application in relation to a matter is not made in accordance with subregulation (2), the relevant State entity for the matter may decide to accept a bilateral application on a later day if the relevant State entity considers it appropriate to do so.
- (4) When making a decision under subregulation (3), without limiting the matters to which the relevant State entity for the matter may have regard, the relevant State entity must have regard to the extent to which the relevant State entity has performed their functions under the Act in relation to the matter.

5. Requirements for bilateral application

A bilateral application must —

- (a) be in writing; and

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- (b) if a form is approved for use in submitting the application under section 122B of the Act —
 - (i) be in the approved form; and
 - (ii) contain or be accompanied by any information required as indicated in the form.

6. Transitional provision for certain clearing permit applications

- (1) This regulation applies if, before the day (*commencement day*) on which this regulation comes into operation —
 - (a) a person has applied under Part V Division 2 of the Act for a clearing permit; and
 - (b) the clearing permit application is being assessed in accordance with the “Bilateral agreement made under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) relating to environmental assessment” entered into by the State and the Commonwealth on 3 October 2014.
- (2) The person who applied for the clearing permit is taken to have made, on commencement day, a bilateral application in respect of the clearing permit application in accordance with these regulations.

V. MOLAN, Clerk of the Executive Council.

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Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
bilateral application.....	3
commencement day	6(1)
initiating process	3
relevant State entity.....	3